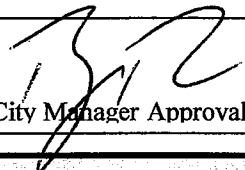





Report to the Auburn City Council

Action Item

Agenda Item No. **3**
City Manager Approval

To: Mayor and Members of the City Council
From: Bernie Schroeder, Director of Public Works 
Date: August 8, 2011
Subject: Auburn Municipal Airport UST Manway Repairs Project - Award

The Issue

Shall the City Council award the Auburn Municipal Airport UST Manway Repairs Project to the lowest responsive bidder?

Conclusion and Recommendation

Staff recommends that the City Council, **BY RESOLUTION**, authorize the Director of Public Works to execute a construction contract with Walton Engineering, Inc. for the Auburn Municipal Airport UST Manway Repairs Project in an amount not to exceed \$45,518.00.

Background

During the past winter, rainfall was allowed to drain in through the access manhole covers directly above the existing underground storage tanks (UST) that serve the Auburn Airport Fuel Island. This in turn allowed water to build up around the leak detection equipment located above the UST and triggered the fuel pumping system to automatically shut down. Staff researched the problem with several experts in the fuel business and developed a scope of work designed to prevent the storm water from causing this effect. Essentially the repair involves replacing the old worn manhole covers and raising them higher above the surrounding grade.

The City issued a request for proposals for the Auburn Municipal Airport UST Manway Repairs Project on July 12, 2011 with a proposal deadline of August 1, 2011. Although several local contractors were solicited the City received only one bid proposal from Walton Engineering, Inc. in the amount of \$41,380. The lack of response may be due to the specialty of this type of work and the short time frame in which to get the work completed with minimal impact to the airport fueling operations.

Staff recommends awarding this project to Walton Engineering, Inc. as the lowest responsible bidder. Walton Engineering, Inc. has a strong background and excellent reputation in completing this type work.

If awarded, the notice to proceed will be given to the contractor in mid August 2011 and dependent on weather the work is likely to be completed by early Fall 2011.

Alternatives Available to Council; Implications of Alternatives

1. Accept Staff Recommendations
2. Take no action.

Fiscal Impact

Funding for this project is out of the Airport budget. The contractor's bid for this project was \$41,380; however, pursuant to Resolution 92-50, the City Council shall award capital projects based on the lowest responsible bidder plus a 10% contingency. Staff included a budget amount of \$40,000 for this project in the approved 2011/12 Operating Budget and would utilize other Airport fund balance to cover the remaining balance to complete the work. Staff allocation costs will be actual costs incurred for the project however are estimated not to exceed \$5,000.

*Attachments: Request for Proposal
Construction Agreement
Resolution*

CITY OF AUBURN



Request for Proposals For Auburn Municipal Airport UST Manways Repairs

Auburn, California 95603

July 2011

City of Auburn
1225 Lincoln Way
Auburn, CA 95603
530-823-4211

Date of Issuance: July 12, 2011
Submittal Deadline: Monday, August 1, 2011
at 3:00 p.m.

Description of Project

The City of Auburn (City) is requesting a proposal from qualified Contractors with licensing applicable to the proposed work, to provide repairs to the Underground Storage Tank (UST) manways and sumps at the Auburn Municipal Airport underground fuel tank facility located at 13620 New Airport Rd. The project's objective is to prevent the seeping of water into the sump areas of the underground fuel tank facility. The contractor shall be responsible to obtain the Air Quality ATC permit and the CUPA permit. A valid City of Auburn Business license will be required.

Specifically proposed project shall include but not be limited to:

1. Remove and properly dispose of any water currently in fuel sump areas;
2. Saw cut, remove and dispose of area of concrete approximately 7' X 7' around each nine (9) UST manways;
3. Remove the existing concrete from around all UST sumps to allow for proper surface water drainage into tank backfill area;
4. Furnish and install new pea gravel backfill materials around all existing UST sumps to accommodate proper surface water drainage;
5. Furnish and install new 42" manways at each STP and Floating Suction sump, a total of six (6) manways;
6. Furnish and install new complete Phil-Tite brand Fill Systems at each of three (3) UST's. Each system includes new Spill Containers and new fiberglass Water Shields with boots around each Spill Container;
7. Restore all concrete removed for this work. All new manways to be installed 2-1/2" above existing tank slab finish grades to divert surface water away from manways;
8. Provide all required Spill Container and Air Quality system testing and reports.

Proposal Requirements

Statement shall include the following:

1. Information demonstrating the Contractor's understanding of, and approach to, the project.
2. Clear and comprehensive statements regarding the proposed delivery of services and products by task.

3. Detailed and comprehensive statement of the cost estimate for the proposed project.
4. The City will require the selected bidder to enter into a Construction Agreement which is attached. All proposed changes to the Construction Agreement need to be incorporated into the proposal.

Selection Process

The bid proposals received will be reviewed and evaluated by City Staff. The selection will be determined by the lowest most responsible bidder. The date a selection of a qualified contractor for this project will be given consideration by the City Council is estimated to be prior to August 22, 2011.

Qualifications Statement Deadline

An original Bid Proposal must be submitted in Room 8 at City Hall, 1225 Lincoln Way, Auburn, CA to the City Clerk no later than 3:00 p.m. on August 1, 2011.

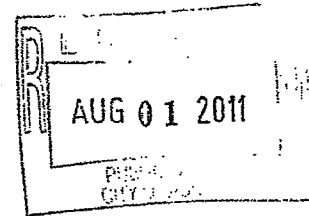
City Contact Information:

Questions regarding the Project may be directed to: Bernie Schroeder at 530-823-4211 x 144.

Bernie Schroeder
Public Works Director
City of Auburn
1225 Lincoln Way, Rm 6
Auburn, CA 95603

Attachments: Construction Agreement

BID PROPOSAL



City of Auburn
Attn: City Clerk
1225 Lincoln Way, Rm 8
Auburn, CA 95603

Re: Auburn Municipal Airport
UST Manway Repairs

Bid Deadline: August 1, 2011 at 3:00 p.m.

Walton Engineering, Inc. is pleased to provide a quotation for the required repairs to the UST manways and sumps at the Auburn Municipal Airport underground fuel tank facility.

After a survey of the fueling facility, we observed the following problems related to the UST sumps constantly taking in surface water:

- Currently at each sump the concrete from the tank slab extends improperly to the inside of the manway all the way down to the fiberglass sump. As the surface water drains through the steel manway lid this excess concrete prevents that water from properly draining into the pea gravel backfill. This concreted area fills with water which eventually overflows into each UST sump.
- The existing UST manway should also be raised slightly to assist in diverting water around and away from the manways. Currently these manways are lower than industry standard practice.
- The fill sump on each tank does not have a proper water shield component around the Phil-Tite spill containers to prevent surface water from entering the fill sumps.

We propose the following repairs as a remedy to the above observed problems.

Our Scope of Work includes the following items:

- Obtain and pay for the two (2) permits required for this work, the Air Quality ATC permit and the CUPA permit.
- Remove and properly dispose of any water currently accumulated in the UST sumps.
- Sawcut, remove and dispose of an area of concrete approximately 7'x 7' around each of nine (9) UST manways.
- Remove the existing concrete from around all UST sumps to allow for proper surface water drainage into tank backfill area.
- Furnish and install new pea gravel backfill materials around all existing UST sumps to accommodate proper surface water drainage.
- Furnish and install new 42" manways at each STP and Floating Suction sump, a total of six (6) manways.

- Furnish and install new complete Phil-Tite brand Fill Systems at each of three (3) UST's. Each system includes new Spill Containers and new fiberglass Water Shields with boots around each Spill Container.
- Restore all concrete removed for this work. All new manways to be installed 1-1/2" above existing tank slab finish grades to divert surface water away from the manways.
- Provide all required Spill Container and Air Quality system testing and reports.
- Comply with the City of Auburn Contract Agreement conditions, as provided, including all prevailing wage rules and insurance requirements.

Our Scope of Work excludes the following items:

- Soil Samples or analytical. None expected.
- Additional concrete repairs or yard re-grading.
- Project bonding.

FULL PRICE: \$41,380.00

Thank you for the opportunity. We look forward to assisting you with your project.

Sincerely,

WALTON ENGINEERING, INC.



Michael E. Walton
President
916-373-1152

STATEMENT OF QUALIFICATIONS

Walton Engineering, Inc. has been engaged in the Construction, Service and Testing of fueling systems throughout N. California for over 22 years. More than 80 trained and certified employees, with an average experience of 14.2 years, operate from the company owned facility in West Sacramento, CA.

Construction

- Providing design, permitting and installation services for all fueling systems from complete facilities to dispenser replacements from Oregon to Bakersfield.
- The number one volume underground tank installer in N. CA the last three years.
- All trades performed with Walton employees. We employ equipment operators, pipe fitters, CA certified electricians and concrete crews.
- All equipment, such as excavators, backhoes and loaders, is company owned.
- Designed, permitted and installed 80% of the alternative fueling facilities in N. CA.

Service

- Providing 24/7 maintenance services for all fueling equipment from Chico to Fresno and throughout the Delta and Foothills.
- We stock over \$1,000,000 in fuel system parts and our technicians are trained and certified by all equipment manufacturers.
- We are Authorized Service Contractors for Wayne, Gilbarco, Veeder-Root and Healy.
- We install and service all POS equipment, including Nucleus, Sapphire and PassPort.

Testing & Compliance

- The largest testing operation based in N. CA.
- Providing all testing and compliance services from Oregon to Bakersfield, including Air Quality, Monitoring Certifications, Designated Operator and SB989.
- All testing is computer based with reports available within 48 hours.
- All testing technicians are equipped with all required repair components and provide troubleshooting and repairs as necessary during the test.
- Secondary containment repair specialists.

Major Clients / References

- 7-Eleven, Inc.
- Circle K Stores, Inc.
- Quik Stop Markets, Inc.
- Tower Energy Group
- Nella Oil Company
- Chevron
- Gilbarco
- Dresser-Wayne
- Pacific Convenience and Fuels

RESOLUTION NO. 11-

RESOLUTION TO AUTHORIZE THE AWARD OF THE AUBURN MUNICIPAL
AIRPORT UNDERGROUND STORAGE TANK MANWAY REPAIR PROJECT TO
WALTON ENGINEERING, INC.

THE AUBURN CITY COUCIL DOES HEREBY RESOLVE:

That the AUBURN CITY COUNCIL does hereby authorize the Director of
Public Works to execute a construction contract with Walton Engineering, Inc.
for the Auburn Municipal Airport Underground Storage Tank Manway Repair
Project in an amount not to exceed \$45,518.

DATED: August 8, 2011

William W. Kirby, M.D., Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the Auburn City Council, hereby
certify that the foregoing resolution was duly passed at a regular session
meeting of the Auburn City Council held on the 8th day of August 2011 by the
following vote on roll call:

Ayes:

Noes:

Absent:

Joseph G. R. Labrie, City Clerk

CITY OF AUBURN
AUBURN MUNICIPAL AIRPORT UST MANWAYS REPAIRS
CONSTRUCTION AGREEMENT

This Auburn Municipal Airport UST Manways Repairs Project, Agreement ("Agreement"), is entered as of this **August 8th, 2011** ("Effective Date"), by and between the City of Auburn, with offices located at 1225 Lincoln Way, Auburn, CA 95603 ("Owner") and Walton Engineering, Inc., with offices located at 3900 Commerce Drive, Sacramento, Ca. 95691 ("Contractor"). In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **CONTRACT PRICE**

- A. The contract price is **\$45,518.00**.
- B. The contract price is based on the unit prices in the bid documents and, together with salvage materials (if any), constitutes the entire consideration for performance and completion of the work described herein and in the contract drawings and specifications which are incorporated herein by this reference.
- C. Owner shall pay Contractor the contract price and Contractor shall furnish all supervision, technical personnel, labor, materials, equipment, tools, permits, and services needed to perform and complete the work to be performed under this Agreement.
- D. Contractor will honor the contract price until January 1, 2012.

2. **TIME OF COMMENCEMENT AND COMPLETION**

The Owner is hereby giving the Contractor a written Notice to Proceed with the work to be performed under this Agreement. The Contractor shall fully complete the work directed within the time set forth as estimated for such work under this Agreement. The estimated time of completion is 60 working days from when work commences under the Notice to Proceed.

3. **COMPLIANCE WITH PROVISIONS OF BID DOCUMENTS**

Contractor shall comply with all terms, provisions, conditions and requirements of the bid provided as Exhibit A, which are as follows:

Part A Proposal

4. **AGREEMENT ATTACHMENTS**

All items described in Paragraph above of this Agreement are attached hereto, incorporated herein, and made a part hereof as though set forth in full herein.

5. **COMPLIANCE WITH PROVISIONS OF AGREEMENT AND ATTACHMENTS**

Contractor shall comply with all provisions of this Agreement and the Agreement attachments.

6. INSURANCE PROVISIONS

During the term of this Agreement, Contractor shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Contractor's performance of this Agreement.

- a) Such insurance shall be of the types and in the amounts as set forth below:
 - i. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - ii. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - iii. Worker's Compensation insurance as required by the laws of the State of California.
 - iv. Employers Liability Insurance for bodily injury or disease with minimum limits of One Million Dollars (\$1,000,000) per accident.
- B. Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- C. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- D. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- E. At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- F. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced

with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

- G. The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
 - H. The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
 - I. All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
 - J. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
 - K. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duties to indemnify, hold harmless and defend under this Agreement.
7. This Agreement is subject to 8-hour work day and wage and hour penalty law, including, but not limited to, California Labor Code Sections 1810 and 1813 as follows:

The Contractor shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by the Contractor's employees in excess of eight hours per day, and 40

hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. The Contractor shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by the Contractor or by any Subcontractor of the Contractor, for each Calendar Day during which such worker is required or permitted to the work more than eight hours in one Calendar Day or more than 40 hours in any one calendar week in violation of the provisions of said Labor Code.

8. This Agreement shall comply with all California and federal statutes relating to nondiscrimination. These include but are not limited to:
 - a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin;
 - b) Title IX of the Education Amendments of 1972, as amended (29 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;
 - c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps;
 - d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age;
 - e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
 - f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § 290dd-2), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - i) Title 28, Code of Federal Regulations, Part 42, Subparts C, D, E, and G;
 - j) Title 28, Code of Federal Regulations, Part 35;
 - k) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
 - l) The requirements on any other nondiscrimination statute(s) which may apply to the application.
9. This Agreement is further subject to Workers' Compensation obligations, including, but not limited to, California Labor Code §§ 1860 and 1861 as follows:

Contractor shall take out and maintain, during the life of this Agreement, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. Contractor and any of Contractor's subcontractors shall be required to provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861.

10. This Agreement is subject to the provisions of California Public Contracts Code § 6109, and Contractor hereby offers and agrees to make any assignment necessary in the event that Contractor is ineligible to perform the work described herein. Further, the successful bidder shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.
11. This Agreement is further subject to the provisions of California Public Contract Code § 7103.5 as follows:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

12. This contract is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public City, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This contract hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
13. This contract is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the California Public Contract Code

regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This contract hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

14. At any time during the term of the Contract the Contractor may, at its own expense, substitute securities for funds otherwise withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300.
15. Pursuant to Labor Code Section 1776, each contractor and subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:
 - a) The information contained in the payroll record is true and correct.
 - b) The employer has complied with the requirements of the Labor Code Sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under supervision (a) shall be verified and shall be available for inspection at all reasonable hours as required by the Labor Code Section 1771.

16. This contract is subject to the prevailing wage law, including, but not limited to California Labor Code Sections 1773.2 and 1771 as follows:

The contractor shall pay the prevailing wage rates for all work performed under this contract. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Contractor shall forfeit as a penalty to the City \$50.00 or any greater penalty provided in the Labor Code for each calendar day or portion thereof, for each worked paid less than the prevailing wage rates for any work done under the Contract employed in the execution of the work by the Contractor or by any Subcontract under the Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wages rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid

less than the prevailing wage rate shall be paid to each worker by the Contractor.

17. To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, fully defend, indemnify and hold harmless City, its authorized representatives and their respective subsidiaries, affiliates, members, directors, officers, employees and agents (collectively, the "Indemnitees") from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to any fees of accountants, attorneys or other professionals (collectively "Liabilities"), arising out of, in connection with, resulting from or related to, any act, omission, fault or negligence of Contractor, Contractor's Representative, or any of its officers, agents, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them (Collectively, the "Indemnitors"), in connection with or relating to or claimed to be in connection with or relating to the work performed under this Agreement.

If Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Contractor that are assumed under or arise out of this Agreement. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of Contractor contained in, resulting from or assumed under this Agreement, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

18. Notwithstanding any other provision of this agreement to the contrary, the provisions of this section shall apply.

The Contractor shall complete all or any designated portion of the Work called for under the Contract within the time set forth in Contractor's proposal dated August 1, 2011.

In accordance with Government Code 53069.85, and all other applicable law, the Contractor agrees to forfeit and pay the City the amount of Two Hundred Dollars (\$200.00) per day for each and every day of unauthorized delay beyond the completion date, which shall be deducted from any monies due the Contractor. This payment shall be considered liquidated damages. Contractor agrees that such liquidated damages are reasonable under the circumstances existing at the time of execution of the contract, that such liquidated damages are to compensate City for losses that are difficult to measure and that such damages are not a penalty.

Failure of the Contractor to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute a material breach of this Contract entitling the City to terminate the Contract unless the Contractor applies for, and receives, a written extension of time.

Failure of the City to insist upon the performance of any covenant or conditions within the time period specified in the Contract Documents shall not constitute a waiver of the Contractor's duty to complete performance within the designated periods unless the City has executed a waiver in writing.

The City's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provision contained in the Contract Documents.

Failure of the Contractor to complete performance promptly within the additional time authorized in a waiver or extension of time agreement shall constitute a material breach of this Contract entitling the City to terminate this agreement.

The Contractor shall not be deemed in breach of this Contract and no forfeiture due to delay shall be made because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor provided the Contractor requests from the Public Works Director an extension of time in writing. Unforeseeable causes of delay beyond the control of the Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of the City, or acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the owner of a utility to provide for removal or relocation of existing utility facilities. Delays caused by actions or neglect of Contractor or his/her agents, servants, employees, officers, subcontractors, directors, or of any party contracting to perform part of all of the Work or to supply any equipment or materials shall not be excusable delays. Excusable delays (those beyond the Contractor's control) shall not entitle the Contractor to any additional compensation. The sole recourse of the Contractor shall be to seek an extension of time.

19. Should the city request a change order, such change orders may only be authorized in writing by the City's Public Works Director.

20. DEFECTIVE WORK

All work which is defective in its construction or deficient in any of the requirements set by City Standards Specifications shall be remedied or replaced by the Contractor in an acceptable manner at their own expense.

21. COMMUNICATIONS

All written communications between the Contractor and the Owner must carry the proper contract number. Such communications shall be effective upon receipt at the following address:

OWNER

CITY OF AUBURN
1225 LINCOLN WAY
AUBURN, CA 95603

CONTRACTOR

WALTON ENGINEERING, INC.
3900 COMMERCE DRIVE
SACRAMENTO, CA. 95691

22. CHANGES IN WORK TO BE PERFORMED

The Owner reserves the right to withdraw or delete any portion of the work to be performed, pursuant to the change order procedure, or the provisions of the General Conditions, Special Provisions and Technical Specifications, for any reason deemed to be in the best interests of the City of Auburn.

OWNER

By: _____
City of Auburn,
Title:
Date:

CONTRACTOR

By: _____
Its:

By: _____
Its:
Date:

Approved as to Form:

NON-COLLUSION AFFIDAVIT

"State of California)
) ss.
County of Placer)

_____, being first duly sworn, deposes and says that he or she is
_____ of _____ the party making the foregoing bid
that the bid is not made in the interest of, or on behalf of, any undisclosed person,
partnership, company, association, organization, or corporation; that the bid is genuine
and not collusive or sham; that the bidder has not directly or indirectly induced or
solicited any other bidder to put in a false or sham bid, and has not directly or indirectly
colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham
bid, or that anyone shall refrain from bidding; that the bidder has not in any manner,
directly or indirectly, sought by agreement, communication, or conference with anyone to
fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost
element of the bid price, or of that of any other bidder, or to secure any advantage against
the public body awarding the contract of anyone interested in the proposed contract; that
all statements contained in the bid are true; and, further, that the bidder has not, directly
or indirectly, submitted his or her bid price or any breakdown thereof, or the contents
thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee
to any corporation, partnership, company association, organization, bid depository, or to
any member or agent thereof to effectuate a collusive or sham bid."

WORKER'S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.
